



ILLEGAL WILDLIFE TRADE: IS IT NECESSARY TO CURB THROUGH NATIONAL POLICIES AND LEGISLATIVE PROVISIONS?

*By Shibanee Acharya
From National Institute of Law, Siksha 'O'
Anusandhan University*

Abstract:

This study investigates and describes the concept of illegal animal trade practices carried out across various countries. The study examines the judicial scenario in restricting such illegal trade within the legislative framework & the various conventions for prevention at the International Level. The topic has been chosen for its relevance to animal trade in today's question in emerging environmental issues. Such trade is the biggest threat to wildlife conservation. One of the most powerful motives for such exploitation of plant and animal species is income proposition through trade, especially in poor countries lacking other major resources. The preservation of wildlife is an issue of Public Interest. Every citizen must protect and improve the natural resources and wildlife etc. in order to have compassion towards them and lead a safe life. Basically, wildlife trade is the interchange of wild animals between the countries or between the continents. It can indulge the living animals and plants in order to extract diverse range of products needed by the humans. Some initiatives have been taken earlier for the protection of wildlife and certain legislations are also accomplished but people lack in visualizing the need of wildlife protection in

the present scenario. This study examines some dimensions of conservation as well as preservation of wildlife which may be successful without losing much natural resources as well as decline in the population of wild animals in society.

INTRODUCTION

Wildlife trade is considered as one of the largest black markets across the globe, with an estimate of billions of dollar a year. It majorly affects the lives of the species such as elephants, rhinos, sharks, sea turtles, tigers etc. as well as the economic development and environmental health of the nation or region. The traffickers are often indulged in the international criminal networks having the suitability to carry the business due to the poor enforcement of laws, porous borders and the corrupt officials. These illegal links are very sophisticated and violent in nature which function without thinking about the loss caused to the local communities or the groups who extracted finance through the export of wildlife products.

The impact of wildlife trade are very huge in nature which ultimately affects the livelihood of people & sometimes it costs their own lives. The wild animals are often killed in order to retaliate or prevent the conflicts expected to arise in future¹. In this situation, it is important to control or stop the various incidents arising out of the conflicts in order to curb the illegal trade processes.

The conflict between the Human and wildlife is rising very quickly as a result of which the survival of the endangered species is becoming a critical issue to look after. These conflicts also have major impact on the

¹ www.panda.org/species



ecosystem equilibrium and biodiversity conservation. Various legislations came into force, but there is still a persistent biasness exists towards the humans and the rights of the wildlife is considered secondary to overview. But as we know, this universe has equally given the importance to the humans and animals to live peacefully.²

ORGANIZATIONS WHICH ADDRESS ILLEGAL WILDLIFE TRADE

- International Union for Conservation of Nature (IUCN)
- South Asia Wildlife Enforcement Network (SAWEN)
- ASEAN Wildlife Enforcement Network (ASEAN-WEN)
- Clark R. Bavin National Fish and Wildlife Forensic Laboratory
- Species Survival Network
- FREELAND Foundation
- Wildlife Alliance
- TRAFFIC, the wildlife trade monitoring network
- International Fund for Animal Welfare

ILLEGAL WILDLIFE TRADE WORLD-WIDE

The extent of illegal wildlife trade is estimated to exist between \$10 billion and \$20 billion per year. As the trade is carried out globally across various countries & continents, therefore the problem is most pertinent in Southeast Asia. The various linkages of trade extends to countries like China, United States, and the European countries which majorly lack in the enforcement of legislations, weak control

over borders, and the margin of high profit along with low risk to the commercial trafficking of wild animals.

One of the organization which address the wildlife trafficking i.e The ASEAN Wildlife Enforcement Network (ASEAN-WEN) is mostly having the support of the U.S. Agency in order to stop the illegal trade networks.

(a) **Asia-** Through the various trade hubs across this continent, the smugglers offer various deals in order to carry out the illegal wildlife trade smoothly having direct jet services to other countries or continents. One of the hotspot area (Chatuchak) is the weekend market which is famous for the illegal wildlife trade involve the sale of various wild animals. Subsequently, the other trade routes are connecting from Southeast Asia to the United states, Cambodia to Japan and sale of many species to China. The illegal trade includes the various demand for the pets and consuming the meat of wild animals. Most of the sea animals are consumed as meat in the Asia continent. In 2016, The Tiger Temple was closed for being accused of exchange of tigers in Thailand.³

(b) **Africa-** unlike Asian continent, many illegal trade took place in African continent both within the countries and across the globe. Most pertinent species in African continent includes the African elephants, vultures, pangolin, rhinoceros, leopards and lions. Trading of animals take place in order to sell the products for decorations, photo frames making, use in medicinal practices, and to decorate shops etc. Morocco has been clearly

² <http://indiasendangered.com> 'Leopards Victims of The Man-Animal Conflict'

³ Vall-Llosera, M.; Shan, S. (2019). "Trends and characteristics of imports of live CITES-listed bird

species into Japan". *Ibis*. 161 (3): 590–604. doi:10.1111/ibi.12653



set up as the transit country which participate in this illegal trade practice due to its porous border with Spain to export wildlife from Africa to Europe.

(c) **South America-**

The practice of animal trading in America is also widespread as that of Southeast Asia.

Due to the presence of Amazonian rainforest animals, it is becoming the popular trading place mostly. Its eminently seen that the export of the wild animals are carried out in the same way as that of the smuggling of drugs across the borders. These activities tend to the destruction of human habitats in many regions, affecting mostly the lives of the wildlife in order to extract gain in selling the parts of the wild animals.⁴

(d) **Online-** Through the web also, illegal wildlife trade take place. However, the amount of activities are difficult to trace through online mode. People across the globe try to connect through online modes for trading purpose and extract money. It is also seen that many fraudulent deals also take place through online mode, resulting to the loss of the trader. This loss causes the destruction in his economic standard, affects his life mostly. Its just like working as a puppet of other traders across the globe who target to earn their profit by simply making us fool through all these deals. We indulge in such a manner that if we want also, can not back out in the proper time period and save ourselves from these fraudsters.⁵

ILLEGAL WILDLIFE TRADE IN INDIA

Illegal wildlife trade has emerged as a means of Transnational offence that has caused greater loss to the habitat and lives of many species across the globe. In India, people are indulged in this illegal trade by selling various body parts of the wild animals to extract their personal gain. They do not hesitate to take the precious life of these animals, rather sell the products in International markets for its purpose. Yet India has set up various polices and legal framework to restrict this trade practice but its failing due to the mental activities of the foolish people. Under the Wildlife (Protection) Act, 1972 it is specified that over 180 species of wild animals and birds are needed to be protected.

Since 1976, India has become a member of the International agreement i.e CITES (Convention on International Trade in Endangered Species of Fauna and Flora) which aims to make it clear that the trade of wild animals and plants does not lead to any harm to their survival. Unlike other countries, India is also stringent in enforcing laws for the betterment of the wildlife, but it lacks in communicating and implementing these laws due to the less participation of people in awareness programs. Due to the governance failures and the lack of political will, these wildlife trade get a chance to take effect in a positive way. Offenders need to be penalized or punished as per the provisions of law in order to have the actual stringent effect of the legislations. There is an urgent need for the action to be taken in order to bring the sustainable levels within wildlife trade and

⁴ Sánchez-Mercado, A.; Asmussen, M.; Rodríguez-Clark, K. M.; Rodríguez, J. P.; Jedrzejewski, W. (2016). "Using spatial patterns in illegal wildlife uses to reveal connections between subsistence hunting and trade". *Conservation Biology*. 30 (6): 1222–1232.

⁵ Carrington, Damian (2018-05-23). "Illegal online sales of endangered wildlife rife in Europe". *the Guardian*. Retrieved 2018-05-23.



restrict the illegal trade that has created havoc & forced many species towards extinction in the surrounding.⁶

WILD LIFE PROTECTION AND THE LAW

During the ancient period, killing of some species of animals was prohibited as a result of which respect for animals was present. Kautilya's Arthashastra to a great extent deals how the rulers gave importance to the preservation and protection of forests as well as animals living in those forests. Indian history and culture pertinently made it clear that the tradition for loving the wildlife and nature has not become extinct yet. It was in the late 19th century that efforts were made through legislative measures to protect the wildlife and the first statute for the protection of wild elephants was enacted in the year 1873 in Madras to prevent the indiscriminate destruction of wild elephants. Six years later at the central level the Elephant Preservation Act of 1879 was passed followed by the Wild Birds Protection Act, 1887 which the government framed various rules to stop the sale of any species of birds during the breeding season.

Later on in 1912 another legislation, namely 'The Wild Birds and Animals Protection Act' was passed with an aim to prohibit the kill and capture of wild animals. The Act also listed clearly about the species of birds and animals which could not be harmed in any way. In the year 1935 through an amendment to the 1912 Act, for the first time provisions were made allowing the provincial Government to declare any area as a wildlife sanctuary to protect the wild animals and birds. However, in the Independent India in

the year 1972 the first comprehensive legislation namely, the Wild Life (Protection) Act, 1972 aiming at the protection of wild animals and birds was enacted.

THE WILD LIFE (PROTECTION) ACT, 1972-

It is the most significant legislation on wildlife protection and the Act has got threefold objective which are: to have a uniform legislation on wildlife throughout the country, to establish a network of protected areas i.e national parks and sanctuaries and to regulate illicit trade in wildlife and its products. The Act was amended in 1986, 1991 and last one in the year 2002 which came into force in the year 2003. The 1991 amendment brought certain radical changes in Act while the last amendment exhaustively dealt with certain matters and incorporated some new provisions. The Preamble of the Act states that- "An Act to provide for the protection of wild animals, birds and plants and for matters connected therewith or ancillary or incidental thereto with a view to ensuring the ecological and environmental security of the country". The Act consists of seven chapters spread over 66 sections.

HUNTING OF WILD ANIMALS:- The Act prohibits hunting of animals except when permission is granted to hunt in certain cases and for special purposes as provided in sections 11 and 12 respectively. As per the provision of section 11 of the Act, the Chief Wild Life Warden or the authorized officer may subject to their satisfaction permit the hunting of animals specified in the Schedules appended to the Act which in their opinion has become dangerous to human life or property or is so disabled or diseased as to be

⁶ <https://www.wwfindia.org>



beyond recovery. Further it is also provided that 'no wild animal shall be ordered to be killed unless the Chief Wild Life Warden is satisfied that such animal cannot be captured, tranquilized or translocated and no such captured animal shall be kept in captivity. Section 12 authorizes the Chief Wild Life Warden to permit hunting of any wild animal for the purpose of education and scientific research.

TRADE AND COMMERCE IN WILDLIFE:-

- A. **Wild animals etc. to be Government Property:-** As per the provision of section 39 of the Act, every wild animal other than vermin, which is hunted or kept or bred in captivity or hunted in contravention of any provision of this Act or any rule or order made thereunder are found dead, or killed by mistake and animal article, trophy or uncured trophy or meat derived from any wild animal referred above and ivory imported into India and an article made from such ivory in respect of which any offence against this Act or any rule or order made thereunder has been committed and every vehicle, vessel, weapon, trap or tool that has been used for committing an offence and has been seized under the provisions of the Act, shall be the property of the State government.
- B. **Declarations:-** As per section 40 of the Act, every person who has the control, custody or possession of any captive animal specified in Schedule I or PART II of Schedule II or animal article, trophy or uncured trophy from such animal or salted or dried skins of such animals or the musk of a musk deer or the horn of a rhinoceros within the thirty days of the commencement of the Act shall declare to the Chief Wild Life Warden of the authorized officer, the number and description of such

animal or such article etc. and the place where such animal or article is kept.

- C. **Regulation of transfer of animal etc.:-** Section 43 of the Act prohibits the transfer of any captive animal, animal article, trophy or uncured trophy by any person in respect of which he has a Certificate of Ownership, by way of sale or by any other mode of consideration of commercial nature. Where a person transfers or transports to another state or acquires by transfer from outside state of any such animal or animal article of which he has a certificate of Ownership, he has to intimate about such transfer to the Chief Wild Life Warden within thirty days of such transfer or transport.
- D. **Prohibition in dealing with animal articles etc.:-** Section 44 of the Act prohibits to a person subject to the provisions of Chapter V-A to commence or carry on the business as a manufacturer of or dealer in any animal article or a taxidermist or a dealer in trophy or uncured trophy or a dealer in captive animal or a dealer in meat or cook or serve meat in any eating house or derive, collect or prepare, or deal in snake venom, without a licence duly granted.
- E. **Suspension or cancellation of license and appeal:-** Section 45 of the Act says that subject to any general or special order of the State Government, the Chief Wild Life Warden or the authorized officer may, for reasons to be recorded in writing, suspend or cancel any license granted or renewed under section 44. However, before suspension or cancellation of such license, the holder of license should be given a reasonable opportunity of being heard.
- F. **Purchase of animal etc. by licensee:-** Section 48 provides that no license shall keep in his control, custody or possession, any animal, animal article, trophy, uncured trophy or meat which has not been lawfully



acquired under the provisions of the Act or any rule or order made thereunder. Section 48-A prohibits acceptance of any wild animal (other than vermin), or any animal article or any specified plant or part or derivative thereof for, transportation, without a permission from the Chief Wild Life Warden or any authorized officer of the State Government.

RESOLUTION FOR BETTER ECOLOGY

In our country India, many legislations and projects have been initiated by the Government in order to protect and conserve the wild animals. After the awareness created globally for the safety of environment and ecology, various steps are taken in the national policies to strengthen the management of the prohibited areas. The Adivasi and forest dwellers protested upon the stringent provisions made for the protection of forests. The major lacunae is the unsuccessful conservation programs having less participation of people at large. Although, Government is trying its best to take necessary steps, but people are hesitant to cooperate in all these awareness programs. Indian citizens are very negligent in participating for the conservation and ecological movements during 1970s. Though the ministry of Environment and Forest introduced various schemes and programs, but it failed due to the lesser interest of people.

The tragedy of civilization is the degradation of ecology and destruction of wildlife population by indiscriminately killing. Man has emerged as a plunderer of nature for fulfilling his thrust for money. He

has successfully extracted his own benefits from all the sources that he opted by diminishing those sources to gain something. Its high time to look after the conservation of wildlife in our surrounding for the smooth leading of life on earth. The only remedy left for making our future in a better way is to control the lives of the wild animals.

SUGGESTIONS FOR FUTURE

There are lots of defects in present system and many ambiguities are in execution of new policies. But we need to make some suggestions for better protection of wildlife and to control ecological crimes in our surroundings for environment for better existence rather coexistence of us in the earth. Some planned and balanced methods are very much required to balance the ecosystem of our planet. As Henry Ford said “don't find fault, find a remedy”, in the same way we have to find remedy about rapid declination of wildlife population and we have to conserve for future as those are part of our natural resources.

- ❖ Several policies are implemented and strict laws are enacted to curb wildlife crime in India and prime minister is the head of 'National Board for Wildlife', in spite of these there is a political inactivity in enforcing laws for conservation purpose. In spite of those, wildlife conservation has got support from each part of society at all. There is a lack of consensus among the political parties about the matter. No political party in India tells about environment protection or ecology.⁷
- ❖ Though several international conventions and treaties are made but there is no instrument or document about the rights of animals while domestic or wild. It is upon

⁷ The Sunday Statesman Magazine; 22nd March, 2009



human being to think about rights of animals and like UDHR, there is necessity of a universal declaration about rights of animals. Though a draft declaration of the animal rights was adopted by the International League of Animal Rights and its preamble proclaimed 'All animals are born with an equal claim on life and the same rights to existence' on 15th October 1978 but those provisions don't have a legal status. In words of Justice Krishna Iyer, in the international level there should be a 'Universal Declaration on Rights of Nature' where all the conservation laws should be codified for protection of natural resources.⁸

- ❖ Powerful environmental justice movements in the third world including India mainly during the decade of 1970, have challenged the capitalist development at the cost of ecological degradation in sector of society. Again the ecological movement of the 1980s was associated with direct action on behalf of the environment and grassroots mobilization to protect communities.⁹
- ❖ India has been suffering from acute problems of marine pollution due to huge disposal of wastes from domestic, industrial and municipal sectors. There is vast destruction of ecological structure within the marine living resources. Though the Wildlife (Protection) Act, 1972 and the Biological Diversity Act, 2002 are there to curb the destruction of wildlife within aquatic and marine resources in spite of separate legal protection is needed for marine living resources from municipal and international pollutions. The Ministry Of Environment and Forests (MoEF) has already proposed for creation of more marine protected areas and

has also suggested to the 'National Board of Wildlife' as well as involving institutes like 'the Central Marine Fisheries Research Institute' and 'the National Institute of Oceanography' for collaborative research to consider creating more marine protected areas as Wildlife Institute of India (WII) does not have the capacity to undertake all research in marine areas.¹⁰

- ❖ The spread of infectious diseases must be stopped and strict measures should be adopted for better protection of wildlife. After the Wildlife (Amendment) Act, 1991, Section 33A gives the legal obligation to Chief Wildlife Warden to take action for immunization of cattle in or within 5 km of sanctuaries. So a wider ambit of laws is needed to save wildlife of all protected areas within the country. The mortality rate of wild animals should be checked and necessary measures must be adopted to immunize the communicable diseases of livestock in and around the national parks and sanctuaries. A strong mechanism is urgent for conducting immunization programs for cattle surroundings of Protected Areas in India to prevent wildlife from communicable diseases.
- ❖ Adoption of wild animals by individual human beings is another remedy for threatened or deserted wildlife. This is practically possible when forest and wildlife authorities can not provide proper care for each and every animal in the protected areas. The conservation movement in India has developed the concept of adoption of wild endangered or rare species. Wildlife adoption programs are common in the West but a relatively new trend in India. Now in India

⁸ The Rights of our animal brethren, Justice V.R.Krishna Iyer, Lawyers Update, July 2005, Pp 16

⁹ The Vulnerable Planet, John Bellamy Foster, Cornerstone Publication, Pp 136

¹⁰ Rescue plan for more endangered species, THE TIMES OF INDIA; April 9, 2007



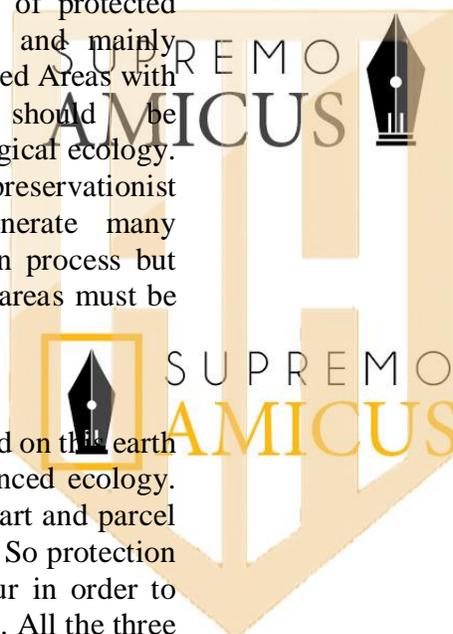
endangered species are bred in safety in various National parks, sanctuaries and zoos. It was very much in practice in western countries also.¹¹

- ❖ The number of protected areas should be increased for the better management of ecology and wildlife. In India presently have 99 National Parks (39,155sq.km), 523 Sanctuaries (1,18,417sq.km) consisting nearly 1.19% and 3.60% respectively of the total geographical areas of the country. So this is not sufficient for vast country like where in Nepal total Protected Areas constitute about 17 per cent of the total area in the country. Several kinds of protected areas are available in India and mainly Community Reserve or Protected Areas with community management should be developed for social and biological ecology. Without adopting strict preservationist approach, India has to generate many community based conservation process but any how number of protected areas must be increased.¹²

CONCLUSION

The survival of mankind on the earth is totally based upon the balanced ecology. Wildlife is considered as the part and parcel of this earth where we sustain. So protection of wildlife is at this need hour in order to sustain in this planet peaceably. All the three organs of the Indian Government have taken all necessary steps in order to sustain the wildlife and ecology equally. Now, it's the duty of all the Indians to ensure that all the natural resources and wildlife must be conserved. It is already enshrined in the Indian Constitution that protection of wildlife must be considered by the citizens. The

legislature has framed various laws and enforced different statutes for the conservation of the fauna and flora. Various International treaties and conventions are initiated to cope up with the fragile ecosystem. All the legal aspects has a strong base in socio-religious terms for protecting the animals and conserve the wildlife. Not only India, all the countries across the globe must stop this illegal wildlife trade and help each other to lead a healthy nation with beautiful birds and magnificent wild animals.



¹¹ Adopt an animal, save endangered species, THE TIMES OF INDIA; January 24, 2008

¹² Global Environment Outlook 3, UNEP (<http://www.unep.org/GEO/geo3/>)